

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1158 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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D R KADIA

Versus

GUJ. ELECTRICITY BOARD

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Appearance:

MR BT BUCH for Petitioner

MR KAUSHAL THAKER for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/12/96

ORAL JUDGEMENT

1. The Sp. Civil Application No.18/84 has been decided as withdrawn which fact is not in dispute between the parties. The petitioner is present in person in the court who has been identified by his counsel. The petitioner has made a statement before this court that he is in employment of Central Public Works Department since September, 1984 but still he is willing to serve Gujarat Electricity Board as he considers more prospects of promotion as well as job satisfaction here.

2. The petitioner was initially employed for specific period ranging from 14-10-1980 to 21-11-1983 and was given appointment by different appointment letters. The details of appointment of the petitioner which has been given to him from time to time are given in para no.5 of this Special Civil Application. The petitioner was appointed as helper at Mandvi Sub-Division. It is not in dispute that the petitioner has been employed in workcharge establishment at Mandvi Sub-Division. By an order dated 28th November, 1983 of the Dy. Engineer, Mandvi Sub-Division, Mandvi, the services of the petitioner were terminated on the ground that his services have come to an end on the expiry of the extended period of his service. The petitioner has challenged this order of termination of services before this court in this Special Civil Application.

3. One of the contentions made by the learned counsel for the petitioner is that it is a case of retrenchment of workman and as such, it is bad in law, as provisions of Sec.25(F) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, 1947) have not been complied with. The petitioner has given out the details of his working with the Board and where from it clearly comes out that the petitioner has worked for 247 days within 12 calendar months preceding the date of his termination. The petitioner has further contended that the Board is an industry and it was incumbent upon it to comply with the provisions of Sec. 25(F) of the Act, 1947 before terminating his services. The provisions of Sec.25(F) of the Act, 1947 are mandatory and the termination in violation thereof is void-ab-initio.

4. On the other hand, Shri Kaushal Thaker, the counsel for the respondents contended that it is a case of fixed term appointment of the petitioner, and as such, the same has come to an end on expiry of the period. In such case, the requirement of provisions of sec.25(F) of the Act, 1947 need not be made.

5. I have given my thoughtful consideration to the submissions made by learned counsel for the parties. The learned counsel for the respondents does not dispute that the termination of the petitioner has been made earlier to coming into effect of the provisions as contained in sec.2(o)(bb) of the Act, 1947. The reply to the writ petition has not been filed and as such the averments made therein stands uncontroverted. Otherwise also, the counsel for the respondents has not disputed that the petitioner has worked for more than 240 days during the 12 calendar months immediately preceding the date of

termination of services of the petitioner. In view of this fact, whatever may be the reasons of the termination of services of the petitioner, it is a case of retrenchment of workman and the argument advanced by learned counsel for the respondents is not available to him in this case, more so when admittedly the provisions of sec.2(oo)(bb) of the Act, 1947 has been brought into force much after the termination of the services of the petitioner. The provisions of sec.25(F) of the Act, 1947 were held to be mandatory and reference in this respect may have to the decision of the Supreme Court in the case of State Bank of India vs. N. Sundaremany reported in 1976(32) FLR 197. Retrenchment means termination of services of a workman by an employer for any reasons whatsoever. The exemption is expressly provided in sec.2(oo) which is not the case here. In the case of Punjab Land Development & Reclamation Corporation vs. Presiding Officer of the Labour Court reported in 1990 (61) FLR 73 it has been held by the Supreme Court that the termination which has been made in violation of the provisions of sec.25(f) of the Act, 1947 is bad in law.

6. On the basis of the facts which have come on record and which are uncontroverted, I have no hesitation to hold that the termination of the services of the petitioner is made by the respondents in violation of provisions of sec.25(F) of the Act, 1947 and as such, the same cannot be allowed to stand.

7. However, the next question does arise is what relief should be granted to the petitioner. At one point of time, I thought that the petitioner should be given some reasonable amount of compensation in lieu of reinstatement as he is already in regular appointment of the Central Government Department, but the petitioner has made it clear that he is desirous of serving the Gujarat Electricity Board and not the department where he is presently working. A person who is in regular employment still desirous of going back to the Board shows that he considers the services of the Board to be more beneficial for him. In view of this fact, I consider it to be a fit case where the relief of reinstatement should be granted to the petitioner.

8. So far as the backwages are concerned, the petitioner is not entitled for a single paise as admittedly he is in gainful employment since September, 1984. So far as the period earlier to September, 1984 and after the date of termination of his services is concerned, it is suffice to say that there is nothing on record to show that during this period he remained out of

employment. However, the petitioner shall be entitled for all other benefits i.e. continuity of service, fixation of his pay notionally on the date as given below as well as all other benefits namely, the benefits of revision of pay-scale as well as of regularisation in regularised establishment and of consideration for promotion, if any, given to the person junior to him etc..

9. In the result, this Special Civil Application succeeds in part and the order of termination of services of the petitioner dated 28th November, 1983 is declared to be illegal to the extent it relates to the petitioner. The respondent no.2 is directed to reinstate the petitioner back in service. The petitioner shall be entitled for the fixation of his pay notionally from the date on which he joined the services with the respondent, and all other benefits except backwages. Rule is made absolute in the aforesaid terms with no order as to costs.